

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,  
 Plaintiff

v.

Brian Keith Wright,  
 Defendant

Case No.: 2:17-cr-00142-JAD-VCF

**Order Denying Motion**

[ECF Nos. 223, 225]

Brian Wright was found guilty of assault on a federal officer in 2019, and the Ninth Circuit affirmed his conviction.<sup>1</sup> Through a largely incomprehensible and narrative motion, Wright sought habeas relief under 28 U.S.C. § 2255 in February of this year.<sup>2</sup> Because his motion contained no legal argument for modification or vacatur of his sentence and the record conclusively established that he is not entitled to the relief he seeks, I denied his motion without directing a response from the government.<sup>3</sup> Six months later, Wright filed a “Motion Requesting this Court to Grant 2255 due to the Government’s Consent,” arguing that “the government conceded to the facts within [his] 2255 due to its 8 months of complete silence.”<sup>4</sup> The government opposes the request.<sup>5</sup>

Wright is mistaken about the history of, and procedural rules applicable to, his § 2255 motion. First, the government did not ignore his motion for eight months—this court denied it

---

<sup>1</sup> ECF No. 221.

<sup>2</sup> ECF No. 223.

<sup>3</sup> ECF No. 228.

<sup>4</sup> ECF No. 230.

<sup>5</sup> ECF No. 231.

1 six months ago, mooted any need for response. More importantly, the government never had an  
2 obligation to respond to the motion in the first place. Rule 4 of the Rules Governing Section  
3 2254 Cases and Section 2255 Proceedings requires the court to dismiss or deny a motion “[i]f it  
4 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to  
5 relief in the district court.”<sup>6</sup> If the court does not so find, only then must it order the government  
6 “to file an answer, motion, or other response within a fixed time . . . .”<sup>7</sup> Because it plainly  
7 appeared from Wright’s motion that he was not entitled to the relief he was requesting, this court  
8 denied the motion and did not direct the government to respond.<sup>8</sup> The government therefore had  
9 no obligation to respond to Wright’s § 2255 motion, so its failure to do so could not be construed  
10 as consent.

11 IT IS THEREFORE ORDERED that Brian Wright’s motion **[ECF No. 230]** is **DENIED**.

12  
13   
14 U.S. District Judge Jennifer A. Dorsey  
15 October 11, 2022  
16  
17  
18  
19  
20  
21

22 <sup>6</sup> Habeas Rule 4.

23 <sup>7</sup> *Id.*

<sup>8</sup> ECF No.